IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

and
THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO : 34297 of 1998

Between:

K. Bala Krishna Rao S/o Kutumba Rao
Working as Dy. Commercial Tax Officer, Penugoda,
West Godavari District.

..... PETITIONER

AND

1. Deputy Commissioner, Commercial Taxes, Division No. I,
Vijayawada, Krishna District.
2. The Commissioner of Commercial Tax,
Commercial taxes complex,
M.J. Market Road, Hyderabad.
3. P. Raghavenra Rao,
working as DCTO, Pithapuram, East Godavari District.
4. M. Subba Rao, ACTO (Intellelgence)
O/o Dy.Commissioner, Commercial taxes,
Vijayawada No. 1 Div. Krishna District.
5. A.Venktramayya,
DCTO II O/o CTO NO. II
Tanuku, West Godavari District.
6. T.S.R. Krishna Rao,
D.C.T.O. Palakollu, West Godavari District.
7. N. Uma Maheswara Rao
D.C.T.O. Satyanarayana Puram,
O/o Dy. Commissioner Commercial Taxes
No. I Div. Vijayawada, Krishna District.

8. P.V. Chalapthi Rao
   DCTO, Jaggayyapet, Krishna District.
9. G.C. Subbaiah
   D.C.T.O. Gudiwada Krishna District.
10. Ch. Rama Krishna Rao
    ACT (Intellegence) O/o D.C.C.T. No. II Division
    Moghalrajapuram, Vijayawada.
11. M. Pamula Reddy
    ACTO (Intellegence) O/o CTO, Park Road,
    Imdadghar, Vijayawada.
12. The Registrar, Andhra Pradesh Administrative Tribunal,
    Purana Haveli, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus, order or directing the respondents 1 and 2 to include the petitioner's name in the panel year 1986-97 of ACTO's of Krishna Commercial Taxes Division with rights of seniority over the respondents 3 to 11 taking into consideration the date of regularization as 14-08-1976 in the cadre of Senior Assistant with all the consequential benefits of pay, increments etc. b) to call for the records connected with impugned judgment R.P. No. 3055/1987 and set aside the judgment in R.P. No. 3055/1987 dated 27.11.1998 of the Andhra Pradesh Administrative Tribunal.

Counsel for the Petitioner: MR. P. BALA KRISHNA MURTHY

Counsel for the Respondents 1 and 2: SPL. GP FOR TAXES

Counsel for the Respondent No.4: MR. A. SURYANARAYANA MURTHY

For Respondents 3 and 5 to 12 : None appeared.

The Court made the following:

<u>ORDER:</u> (per Hon'ble Sri Justice Goda Raghuram)

Aggrieved by the order of the A.P. Administrative Tribunal dated 27-11-1998 rejecting R.P.No.3055 of 1987, the applicant therein, is before this Court.

2. Petitioner herein was appointed as an Upper Division Stenographer on temporary basis with effect from 14-08-1976 in the Commercial Tax Department after sponsorship by the concerned Employment Exchange. He thereafter appeared for regular selection (conducted by the Andhra Pradesh Public Service Commission) for the post of Upper Division Stenographer during 1978. On success thereat, he was allotted to the office of the Director of Printing in January,1979. A few days thereafter, he submitted a representation on 24-01-1979 seeking re-allotment (he chooses to call it as retention) to the Commercial Taxes Department, whereat he had served as an Upper Division Stenographer on temporary basis prior to his regular selection by the Andhra Pradesh Public Service Commission. Eventually after consultation between the Heads of the Departments concerned, and acceptance by the Andhra Pradesh Public Service Commission, the petitioner was re-allotted to the Krishna Division of the Commercial Taxes Department, whereat he joined duty on 25-07-1979. It requires to be noticed that there was only one post of Upper Division Stenographer in the Krishna Division at the time of the petitioner joining service thereat in July, 1979.

3. The Deputy Commissioner of Commercial Taxes, Vijayawada by his proceedings dated 21-02-1980 passed an order as under--

> "The services of Sri K. Balakrishna Rao a temporary U.D. Steno, Office of the Deputy Commissioner (CT) Vijayawada, who was selected and allotted to Krishna Division, for appointment as U.D. Steno by the Andhra Pradesh Public Service Commission, Hyderabad in the reference 2nd cited, are regularized in the cadre of U.D. Steno with effect from 14—8—1976 F.N. (ie.,) from the date of his first appointment under Rule-23(a) of the State and subordinate service rules.
>
> His seniority in Krishna Division will be decided in due course."

4. As is apparent from the above order of the competent authority, the petitioner's services were regularized with effect from 14-08-1976, i.e. the date of his initial temporary appointment as U.D. Stenographer in the office of the Deputy Commissioner, Commercial Taxes, Vijayawada, notwithstanding that he had been regularly appointed pursuant to the selection by the Andhra Pradesh Public Service

Commission, in January 1979 and on re-allotment to the Commercial Tax Department on
25-07-1979. Consequent on the above order of the Deputy Commissioner of Commercial Taxes dated 21-02-1980 the petitioner's probation was declared to have been satisfactorily completed with effect from
19-08-1978.

5. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor issued amendments to the Special Rules - The A.P. Ministerial Service Rules, in G.O.Ms.No.635 General Administrative (Services.B) Department dated 13-09-1979. The existing item IV of the proviso to sub-rule (1) of Rule 27of the A.P Ministerial Service Rules were substituted. As per the amendment supra, the seniority of a member of the service appointed to the post of Upper Division Clerk from the post of Upper Division Stenographer shall be reckoned with reference to the date of his first appointment as Upper Division Stenographer, for the purpose of promotion to the next higher category from the respective categories. As the petitioner was converted as Upper Division Clerk on 05-08-1980 he was therefore, entitled to the benefit of item IV of Rule 27 (i) of A.P. Ministerial Service Rules vide the amendments issued in G.O.Ms.No.635 dated 13-09-1979. He is entitled to count his entire service in the category of Upper Division Stenographer in the category of Upper Division Clerk for the purpose of further promotions to higher categories. Though there is a faint contest on behalf of the Government on this aspect, in view of the clear and imperative trajectory of the amendments to the Ministerial Service Rules, in G.O.Ms.No.635 dated 13-09-1979, the petitioner's interpretation on this aspect to the matter commends the acceptance of this Court. In view of the fact that the petitioner's services were converted from Upper Division Stenographer to Upper Division Clerk on 05-08-1980, he would be entitled to his seniority as Upper Division Stenographer in the category of Upper Division Clerk for the purpose of considering his promotion to higher category.

6. Proceeding on the above basis, the petitioner contended before the Tribunal and reiterated here that as his service in the category of Upper Division Stenographer was regularized by the Deputy Commissioner, Commercial Taxes, Krishna, with effect from
14-08-1976, he is entitled to seniority as Upper Division Clerk with effect from 14-08-

1976 and his further promotion to the post of Assistant Commercial Tax Officer should have been considered on the said basis. In fact and reality, however, the official respondents have considered the case of the petitioner for promotion to the post of ACTO with effect from 05-08-1980, the date on which he was converted from the post of U.D. Stenographer to the post of U.D. Clerk.

7. The Tribunal had earlier passed an order dated 29-06-1989 directing the Commissioner of Commercial Taxes to consider the petitioner's representation in the light of the observations made therein for inclusion of his name in the panel of 1986-87 of A.C.T.Os of Krishna Commercial Taxes Division, taking into account the petitioner's service in the category of U.D. Stenographer with effect from 14-08-1976.

8. The other affected employees who were also parties to the R.P.No.3055 of 1987, however, appeared to have filed an application for setting aside the order dated 29-06-1989 of the Tribunal. This application was rejected and the affected parties moved the Supreme Court of India and eventually on the basis of the directions of the Supreme Court, the Tribunal heard the case on merits and passed the order dated
27-11-1998, impugned in this writ petition.

9. On behalf of the respondents, it was contended before the Tribunal that Rule 16 of the Andhra Pradesh Ministerial Service Rules ordains that all the transfers of probationers and approved probationers either on administrative grounds or on requests of the individuals from the unit of the office of the Head of the Department originally allotted, to another unit of the office of the Head of the Department or to the offices notified as State Level Offices or Special offices, to which the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order,1975, does not apply, may be made by the Head of the Department concerned with the concurrence of the other Head of the Department, subject to the condition that their seniority shall be regulated in accordance with the provisions contained in Rule 27 of A.P. Ministerial Service Rules.

10. Rule 27 (iii) of the Andhra Pradesh Ministerial Service Rules, 1966 issued under G.O.Ms.No.1271, General Administration (Services-B) Department dated 17-10-1966 mandates that the seniority of a member of the service who is transferred on his own request from one department to another shall be fixed in the latter department or office with reference to the date of his first appointment in the latter department or office. The contention of the official respondents, relying on an interactive analysis of the Rules 16 and 27of the Andhra Pradesh Ministerial Service Rules is that as the petitioner's re-allotment to the Commercial Taxes department with effect from 25-07-1979 is pursuant to the petitioner's request contained in his representation dated 24-01-1979, his seniority in the category of Upper Division Stenographers in the status of a Probationer should count from 25-07-1979 in view of the mandatory provisions of Rule 16 read with Rule 27(iii) of the Andhra Pradesh Ministerial Service Rules. Faced with the prospect of explaining the order of the Deputy Commissioner of Commercial Taxes, Krishna dated 21-02-1980, the learned Government Pleader contends that the said order regularizing the services of the petitioner in the category of Upper Division Stenographer with effect from 14-08-1976, was issued erroneously and without considering the position under Rule 16 r/w Rule 27(iii) of the Andhra Pradesh Ministerial Service Rules. It is contended that the last sentence of the Deputy Commissioner's order dated 21-02-1980 states that the petitioner's seniority in Krishna District will be decided in due course and this clause enables to relieve the State from the otherwise illegal effect of the Deputy commissioner's order.

11. If the petitioner is entitled to seniority in the category of Upper Division Clerk with effect from 14-08-1976, as per the order of the Deputy Commissioner dated 21-02-1980, it is indisputable that he would be entitled to review and restoration of his seniority in the categories of A.C.T.O., and D.C.T.O. and would also have a legitimate expectation of promotion as C.T.O. on that basis. This is what the petitioner desired when he filed R.P.3055 of 1987 in the Administrative Tribunal, and this is what he failed to get when the R.P. was dismissed.

12. In the light of the chronology of the events adverted to above and in the absence

of any decision taken or order passed by the State Government rescinding the order of the Deputy Commissioner dated

21-02-1980, the government could not be heard to contend that the seniority of the petitioner in the category of Upper division Clerk cannot be countenanced with effect from14-08-1976**.** However it requires to be noticed that the issue does not rest at such administrative inaction. The petitioner had approached the Tribunal and this Court seeking reliefs in the nature of a writ of Mandamus, a discretionary remedy which must necessarily follow the principles of equity, but certainly in the footsteps of law. Rule 16 of the Andhra Pradesh Ministerial Service Rules starts with a non-obstante clause i.e., "(1) Notwithstanding anything in Rules 10 to 13 and 15 of Andhra Pradesh Ministerial Service Rules". The Andhra Pradesh Ministerial Service Rules are also Special Rules in the context of the Andhra Pradesh State Subordinate Service Rules and in the case of a conflict the ministerial service rules prevail over any provisions of the Andhra Pradesh State and Subordinate Service Rules. Considered on this interactive platform, the conclusion is irresistible that the power of the appointing authority to grant a date of regularization (under Rule 23-A of the Andhra Pradesh State Subordinate Service Rules), is subject to the clear mandate of Rule 16 of the Andhra Pradesh Ministerial Service Rules. Inasmuch as Rule 16 read with 27 (iii), of the Andhra Pradesh Ministerial Service Rules, disables a person, who had migrated from one department to another on re-allotment at his request, from reckoning his earlier seniority before such re-allotment, the earlier date of regularization granted by the Deputy Commissioner of Commercial Taxes, is an order contrary to the clear mandate of the supervening rules, namely the Andhra Pradesh Ministerial Service Rules. In issuing Mandamus to the State Government to follow the consequences flowing from the Deputy Commissioner's order dated 21-02-1980, this Court cannot be oblivious of the fact that no Mandamus should be issued that brings about illegal or ultra-vires consequences. These are the settled and inherited principles regarding the exercise of discretion in issuing a writ of Mandamus vide GADDE VENKATESWARA RAO v. STATE OF A.P.[1]

13. The State Government, however, had successfully contended before the Tribunal that the petitioner's seniority in the category UD Clerk should be reckoned only on 05-08-1980, the date on which he was converted as UD Clerk from the category of UD Stenographer. Such a contention of the State as upheld by the

Tribunal cannot however be sustained. As the petitioner's re-allotment to the Commercial Tax Department as Probationer in the category of UD Clerk was on 25-07-1979, he was entitled to be treated as a regular probationary UD Stenographer with effect from 25-07-1979, in view of the proviso to Rule 16 read with Rule 27(iii) of the A.P. Ministerial Service Rules. In view of the amendment to Rule 27 of A.P. Ministerial Service rules**,** *qua* G.O.Ms.No.635 General Administration dated 13-09-1979, notwithstanding his conversion to the category of UD Clerk on 05-08-1980 the petitioner is entitled to count his entire length of regular service in the category of UD Stenographer for the purpose of reckoning seniority in the category of UD Clerk. Accordingly the petitioner's seniority in the category of UD Clerk shall have to be reckoned with effect from 25-07-1979.

14. On the above basis, the Official respondents are directed to review the case of the petitioner in the categories of A.C.T.O., and D.C.T.O., treating the petitioner as an UD Clerk with effect from 25-07-1979 and not with effect from 05-08-1980. In the event, the petitioner gets earlier dates of appointment to the categories of ACTO and DCTO, on review, he shall be entitled to all consequential and incidental benefits including salary and emoluments. The case of the petitioner on such review of seniority, if occurring in the category of DCTO shall also entitle him for consideration to the post in the category of CTO on the basis of such revised seniority in the category of DCTO. As the *lis* has been pending for well nigh two decades now, the official respondents are directed to conduct and conclude the above exercise i.e. review of the seniority of the petitioner in the category of ACTO and DCTO and if warranted in the category of CTO, expeditiously and in any case within a period of four months from the date of receipt of a copy of this order. The order of the Tribunal is modified to the extent above.

15. The writ petition is accordingly disposed of, no order as to costs.

J. CHELAMESWAR, J

GODA RAGHURAM, J

Dt.22-09-2004

Note: Issue CC in 7 days.

B/o

Glv/knk

ASSISTANT REGISTRAR

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SECTION OFFICER

Copies to

1. The Deputy Commissioner, Commercial Taxes, Division No. I, Vijayawada, Krishna District.
2. The Commissioner of Commercial Tax, Commercial taxes complex, M.J. Market Road, Hyderabad.
3. The Registrar, Andhra Pradesh Administrative Tribunal, Purana Haveli, Hyderabad.
4. Two CCs to the Special Government Pleader for Taxes, High Court Buildings, Hyderabad. (OUT).
5. Two C D copies.